

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SILVERMAN & SILVERMAN, LLP,

Plaintiff,

-against-

PACIFICA FOUNDATION,

Defendant.  
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**MEMORANDUM AND ORDER**

No. 11-CV-1894 (FB) (RML)

*Appearances:*

*For the Plaintiff:*

ARTHUR Z. SCHWARTZ, ESQ.  
Advocates for Justice  
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*For the Defendant:*

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SCOTT E. KOSSOVE, ESQ.  
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**BLOCK, Senior District Judge:**

On June 23, 2014, Magistrate Judge Levy issued a Report and Recommendation ("R&R") recommending that the Court strike defendant's answer and counterclaims as a sanction for failure to comply with discovery orders. Magistrate Levy further recommended that defendant be ordered to pay the attorney fees incurred by plaintiff in bringing motions to enforce the discovery orders.

The R&R stated that “[a]ny objections to this Report and Recommendation must be filed with the Clerk of the Court . . . within fourteen (14) days,” and that “[f]ailure to file objections within the specified time waives the right to appeal the district court’s order.” R&R at 6. All parties received electronic notice of the R&R the day it was issued, making objections due by July 7, 2014. To date, no objections have been filed.

Where, as here, clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court, however, will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. To the contrary, the Court agrees that the recommended sanctions are commensurate with defendant’s conduct. Accordingly, the Court adopts it without *de novo* review and strikes the defendant’s answer and counterclaims. In consequence, defendant is in

default. The matter is recommitted to Magistrate Judge Levy for a report and recommendation on damages, as well as the amount of attorney's fees to be assessed.

**SO ORDERED.**

/s/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
July 25, 2014